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HIGH COURT OF JUDICATURE AT BILASPUR, CHHATTISGARH

Criminal Appeal No. 1405 OF 1994

Devdharan S/o. Jethu Gond
Aged about 45 years,
Resident of Batidih,
Police Station : Dhourpur,
District : Surguja

Vs.

State of M.P.
Through : Station House Officer,
Police Station :Dhourpur,
District :Surguja

JUDGEMENT FOR CONSIDERATION

Sd/-
JUDGE
20/01/2006

HON'BLE SHRI L.C.BHADOO ,J.

Sd/-
L.C. Bhadoo
Judge

POST FOR JUDGMENT ON 23rd JANUARY 2006

Sd/-
Dhirendra Mishra
Judge

(14)

DIVISION BENCH
HON'BLE SHRI L.C.BHADOO, J
& HON'BLE SHRI DHIRENDRA MISHRA, J

Criminal Appeal No. 1405 of 1994

Appellant : **Devdharan**

Vs.

Respondent : **The State of Madhya Pradesh**

Shri Vijay Kumar Pandey, learned counsel for the appellant.
Shri Alok Bakshi, learned G.A. for the State/respondent.

JUDGMENT
(Delivered on 23rd January 2006)

Per Dhirendra Mishra, J

The appellant has preferred this jail appeal as he is convicted under Section 302 of the Indian Penal Code and sentenced to undergo life imprisonment for causing homicidal death of his wife Tekay Bai by learned II Additional Sessions Judge, Ambikapur vide his judgment dated 07.09.1994 passed in S.T.No. 109/93.

2. The case of the prosecution, in brief, is that on 10.10.1992 on the basis of report lodged by Lohra Crime No. 104 dated 10.10.1992 was registered under Section 302 of the IPC against the appellant. In the First Information Report of Ex.P/8 it was alleged that elder son of the appellant Kumman informed the complainant at about 6.00 a.m. in his house that in the previous evening his father has killed his mother near Bhaleseth Tank of the village whereupon he went to the house of Langu and saw the dead body of Tekay Bai. He also found injuries over left eye, right cheek, face and blood was oozing out of the injuries. On being asked from Ghurni Bai about the said incident she narrated that in the previous evening at about 7.00 p.m. when she was returning from Bhilai, Korwapara she saw that appellant Devdharan was beating his wife by kicks and fists near the Tank and she tried to mediate,

however, he continued beating. Earlier on the basis of report lodged by complainant Lohra merg intimation No. 31/92 of Ex.P/10 was recorded by the police. During investigation inquest of Ex.P/3 was prepared in the presence of witnesses, after issuing notice to the witnesses vide Ex.P/2. Dead body was sent for autopsy to Govt. Hospital, Dhourpur vide memo of Ex.P/9-A. Dr. D.P.Shandilya (P.W.11) conducted postmortem and submitted his report of Ex.P/9. In the postmortem report the doctor found that blood like liquid had oozed from the mouth of the deceased. He also found ante-mortem lacerated wound over left eye, cut wound over left ear and red colour contusion over right lumber region (posterial). Spleen, liver and left kidney were pale in colour whereas there was a rupture in the right kidney. The injuries present over the face and the rupture of kidney were caused by hard and blunt object. The cause of death is excessive bleeding due to rupture of right kidney and the death was homicidal in nature. Bloodstained gross and panicles of paddy, plain gross and panicles of paddy, broken bangles and ear rings of the deceased etc. were seized from the spot vide seizure memo of Ex.P/4. Halka Patwari prepared the spot map of Ex.P/1. The wearing apparels of the deceased i.e. petticoat, sari and blouse were seized vide document of Ex.P/2. The accused was arrested on 10.10.1992 vide arrest memo of Ex.P/15. The seized articles were sent for chemical examination to the Forensic Science Laboratory vide memo of Ex.P/16. The report of the F.S.L. is Ex.P/18 wherein blood was found in the grass and wearing apparels of the deceased. After recording the statement of the witnesses charge sheet was filed in the Court of Judicial Magistrate First Class, Ambikapur who committed the case to Sessions Court and the same was received for trial on transfer by the learned Additional Sessions Judge. Charge under Section 302 of the IPC was framed by the learned Additional Sessions Judge. The appellant abjured his guilt whereupon the prosecution examined in all 12 witnesses in support of its case. The statement of the accused was recorded under Section 313 of the Cr.P.C. The appellant denied the circumstances appearing against him

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and submitted that he is innocent and has been falsely implicated. However, learned Additional Sessions Judge convicted and sentenced the appellant as mentioned above.

3. It is not in dispute that the cause of death was excessive bleeding due to rupture of right kidney and as such homicidal in nature. The only question to be decided is - whether the learned Additional Sessions Judge was justified in arriving at the conclusion that the deceased sustained injuries as a result of beating by the appellant and whether the Court below was justified in convicting the appellant under Section 302 of the IPC?

4. The learned Court below has based its conviction mainly on the statements of complainant Lohra (P.W.7), Ghurni Bai (P.W.8), Kumman (P.W.9) son of the appellant, Langu (P.W.10) and Dr. D.P.Shandilya (P.W.11). Lohra (P.W.7) has stated that son of the deceased informed him that his father Devdharan has killed his mother whereupon after witnessing the dead body, he lodged the report of Ex.P/8. Whereas Ghurni Bai (P.W.8) has stated that when she was returning towards her house in the evening, she saw Devdharan assaulting the deceased by kicks and fists as a result of which Tekay Bai had fallen on the earth. She tried to mediate but the appellant pushed her away whereupon she went to her home and in the morning she learnt from the mother of the deceased that Tekay Bai has died. She was also witness of the inquest report of the deceased and she had found injuries over the person of the deceased. P.W. 9 Kumman, son of the deceased has also stated that his parents were in drunken stage, her mother was lying over the field, she had sustained injuries over her head, she was brought home by Charku and other relatives and Ghurni Bai informed that his father was beating his mother and his father has run away due to fear of beating. P.W. 10 Langu who is elder brother of the deceased has stated that Devdharan and his wife had gone to take the feast of festival. In the evening Kumman informed that his mother is lying near Bhalaseth Tank and she was not speaking whereupon they reached near the

place of incident and found Tekay Bai lying over the field, however, she was breathing. Blood was oozing from her face. They took her to their residence. In the next morning accused came to his house and slept in the same cot on which the deceased was sleeping. In the morning Devdharan said that his wife is dead. On being scolded he asked that what he should do whether he should abscond.

5. Learned counsel for the appellant submits that from perusal of the statements of the witnesses it is evident that the incident took place on the spur of moment, there is no motive in the instant case and the same occurred as the appellant and the deceased were in drunken stage. Considering that the appellant assaulted the deceased by kicks and fists, knowledge to the appellant that the blows given by him may cause death of the deceased cannot be attributed to the appellant and he can, at the most, be convicted only under Section 323 of the IPC.

6. On the other hand, learned counsel for the State/respondent supported the impugned judgment of the trial Court.

7. We have heard learned counsel for the respective parties and perused the material available on record.

8. As regards the submission of learned counsel for the appellant that since the blows were given by the appellant by kicks and fists, it cannot be inferred that the appellant gave those blows with the knowledge that the same may cause death of the deceased, the same can be accepted particularly when the appellant continued assaulting the deceased with kicks and fists on her vital organs despite being dissuaded by Ghurni Bai.

9. From perusal of the statements of the above witnesses it is evident that the appellant and his wife Tekay Bai were returning after enjoying the feast. They were in inebriated condition and there was some quarrel between the two near the Tank and because of that the appellant assaulted the deceased with kicks and fists as a result of which she fell

on the ground and due to the assaults given by the appellant, right kidney of the deceased got ruptured causing excessive bleeding as a result of which she died. In the cross-examination of the above witnesses no material has come out which may take away the credibility of the witnesses.

10. Taking into consideration that the witnesses are close relatives of the appellant and further considering that they had no reason to falsely implicate the appellant in the above crime, it can be safely held that the injuries over the person of the deceased were caused by the appellant and the Court below has correctly held the appellant responsible for causing injuries to the deceased.

11. The only question now remains to be decided is whether the appellant has committed culpable homicide amounting to murder? From evidence available on record it is evident that there was no previous enmity between the appellant and the deceased and they were returning together after enjoying the feast and the incident occurred on the spur of moment on the way on some trivial matter. As both of them were in inebriated condition, the appellant assaulted the deceased by kicks and fists, therefore, it cannot said that the appellant caused bodily injuries over the deceased with an intention to cause her death.

12. In view of the aforesaid discussions, in our considered opinion the offence committed by the appellant does not travel beyond Section 304-II of the IPC. In the result, the appeal partly succeeds. The conviction of the appellant under Section 302 of the IPC is set aside and instead the appellant is held guilty of offence under Section 304-II of the IPC. From perusal of the record it appears that the appellant is in jail since 10.10.1992 till date and as such he has already completed more than 13 years of jail sentence and the maximum jail sentence prescribed under Section 304-II of the IPC is 10 years, therefore, in the aforesaid circumstances, the appellant is directed to be set at liberty forthwith, if not required in any other case.

Sd/-
L.C. Bhadoo
Judge

Sd/-
Dhirendra Mishra
Judge